

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DERRICK HERRING,

Petitioner,

v.

WILLIAMS,

Respondent.

ORDER

16-cv-364-jdp

Pro se petitioner Derrick Herring asks me to reconsider my decision to dismiss his petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Dkt. 3 and Dkt. 5. I construe plaintiff's submission as a motion to alter or amend the judgment, pursuant to Fed. R. Civ. P. 59(e).

"To prevail on a motion for reconsideration under Rule 59, the movant must present either newly discovered evidence or establish a manifest error of law or fact." *Oto v. Metro. Life Ins. Co.*, 224 F.3d 601, 606 (7th Cir. 2000). "Rule 59 is not a vehicle for rearguing previously rejected motions[.]" *Id.* Here, petitioner merely restates the claims that he brought in his petition. Petitioner contends that I did not address his contention that the Controlled Substances Act violates the Tenth Amendment and infringes on the states' exclusive jurisdiction to prosecute drug offenses that occur within a single state. And petitioner reargues his claim that 18 U.S.C. § 922(g)(1) violates the Second Amendment.

Petitioner overlooks the fact that I dismissed his petition primarily because he does not have a cause of action under § 2241. Dkt. 3, at 2-3 ("Here, petitioner cannot demonstrate that the first two conditions are present: he has not identified a new statutory interpretation case (in fact, he primarily relies on cases from more than one hundred years

ago), much less that some new case applies retroactively on collateral review. Petitioner may not proceed under § 2241, and I must dismiss the petition.”). And regardless, the August 9, 2016, order fully addresses both of petitioner claims. Petitioner does not offer any new arguments or facts to support those claims, and I stand on my previous analysis. For these reasons, I will deny his motion.

ORDER

IT IS ORDERED that petitioner Derrick Herring’s motion for reconsideration, Dkt. 5, is DENIED.

Entered September 9, 2016.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge